SUPREME COURT, U. S.

APR 25 1969

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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 1321

POMONA VALLEY CENTER, INC., a California corporation *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Appeal to the California Court of Appeal, Second Appellate District, Division Two.

PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of a Court of Appeal of the State of California, Second Appellate District, Division Two entered in the above-entitled case in Civil No. 31828.

Citation to Opinions Below.

Pursuant to the determination of the District Court under Rule 976 of the California Rules of Court, the opinion thereof was not published. It is printed, however, in Appendix A hereto, *infra*, commencing at page 1 thereof. The opinion of the trial court delivered from the bench is unrecorded. It is set forth, however,

on pages 104-118 of the Reporter's Transcript certified in connection to Civil No. 31827 by reason of the Clerk's manner of preparation of the Reporter's Transcript.

The petition for hearing in the Supreme Court was denied on February 5, 1969 and the order of denial is reported in the minutes of the Supreme Court for that date in 78 A.C. 7 (p. 3 Minutes February 5, 1969).

Jurisdiction.

The date of the judgment of the Court of Appeal was December 9, 1968. A timely petition for hearing in the Supreme Court of the State of California was denied on January 29, 1969.

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. §1257(3) (1948) in that the Board of Supervisors of the County of Los Angeles, sitting as a Board of Equalization, so conducted itself at the time of the hearing on the application of the Petitioner for an assessment reduction, as to deny the Petitioners of the due process of law and equal protection of the laws contained in the Fourteenth Amendment of the United States Constitution.

Questions Presented.

Were the Petitioners denied procedural due process or the equal protection of the laws in any of the following respects:

1. By the appellate court in making the presumption of validity of the act of a public official conclusive.

2. By the failure of the local Board of Equalization to make findings of fact upon which an effective review could be had.

3. By the local board of equalization in excluding from evidence the sales ratio studies prepared by the office of the assessor for the tax year in question, by the exclusion of the sales ratio studies of the taxpayer's witness.

4. By the local board of equalization in excluding from evidence the ratio studies for the taxing jurisdiction of the State Board of Equalization for the year immediately prior to the year for which a hearing was had, and by the failure of the Board of Equalization to require the assessor to disclose to the Board of Equalization the State Board ratio studies for the tax year in question in his possession at the time of the hearing.

5. By an erroneous concept of law on the part of the Board of Equalization as to the methods of showing discrimination.

Statutes Involved.

United States Constitution, Amendment Fourteen, Section 1, Clauses 3 and 4

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jursdiction equal protection of the law."

California Statutes in 1961 provided:

California Constitution, Article XI, Section 12, a portion of which provides as follows:

> "All property subject to taxation shall be assessed for taxation at its full cash value."

The first sentence of California Constitution, Article XIII, Section 1, which provides:

> "All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided."

Revenue and Taxation Code §401,

> "Except as provided in this part, all taxable property shall be assessed at its full cash value."

Revenue and Taxation Code Section 1815,

> "To enable the board to perform its duties under this article and Sections 9 and 14 of Article XIII of the State Constitution, the board shall make a survey, no less often then triennially, in each county to determine the total full cash value of all locally assessable tangible property as of the lien date for the last equalized roll. As a basis for this determination, the board shall ascertain the full cash value of a sample of locally assessable tangible property sufficient in size and dispersion to insure an adequate representation therein of the several classes of property throughout the county. The board shall for such purposes have access by its duly authorized representatives to all records, public or otherwise, of any county assessor."

Revenue and Taxation Code §1817,

> "The board shall annually estimate any change that may have occurred in the full cash value of locally assessable tangible property between the lien date of the roll for which the last survey was

made pursuant to Section 1815 and the lien date of the current roll. The board shall use as the basis for such estimate date on school enrollment, retail sales, wages, or other factors reasonably indicative of change or lack of change in the total full cash value of the property. The relationship between the total assessed value of the tangible property on the current local roll and the total full cash value of locally assessable tangible property so estimated shall be computed for each county of the State by the third Monday in July of each year. The board shall transmit promptly to each county assessor a statement of its determination relating to his county."

Revenue and Taxation Code §1818,

"The Board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the County made in the last year pursuant to §1815. The tabulation shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of the prior year pursuant to §1817. *All such tabulations shall be open to inspection by all persons interested.*" (Emphasis added)

Revenue and Taxation Code §1819,

> "As soon as tabulations have been made pursuant to Section 1818, but not later than August 1, the Board shall give the Assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjustment it deems appropriate as the result of such discussion, but not later than September 2, it shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

California Administrative Code Title 18, Chapter 2, Subchapter 7 relating to intercounty equalization, Section 2703:

> "Between the date the notice is given pursuant to the regulation 2702 and September 1, tabulations pertaining to the county are open to and available for inspection during regular business hours at the office of the board in Sacramento, by the county assessor, any deputy assessor designated by him, *any official or employee of the county designated by the board of supervisors* and *any official or employee of a taxing agency within the county designated by its governing body.*" (Emphasis added)

Revenue and Taxation Code Section 405:

> "Annually, the Assessor shall assess all the taxable property in the county, except stated as property, to the persons owning, claiming, possessing, or controlling it at twelve o'clock meridian of the first Monday in March. The Assessor shall ascertain such property between the first Monday in March and July."

Revenue and Taxation Code Section 616, first paragraph thereof:

> "On or before the first Monday in July, annually, the Assessor shall complete the local roll."

Revenue and Taxation Code Section 1602:

> "Until the equalization is finished, the local roll shall remain in the Clerk's office for the inspection of all persons interested."

Revenue and Taxation Code Section 1603:

> "Annually, on the first Monday in July, the Board of Supervisors shall meet as the County Board of Equalization to equalize the assessment of property on the local roll. It shall continue in session for that purpose, from time to time, until the business of equalization has been disposed of, but not later than the third Monday in July."

Revenue and Taxation Code Section 1605:

> "After giving notice prescribed by its rules, the County Board may increase or lower any assessment on the local roll in order to equalize the assessment of property on the local roll."

California Constitution, Article XIII, Section 9:

> "A State Board of Equalization, consisting of one member from each congressional district . . . whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for purposes of taxation . . . the boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equal-

ize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county board may prescribe, as to the county assessments, and under such rules of notice as the board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; . . ."

Section from Government Code Section 15606:

"The State Board of Equalization shall:

* * *.

"(e) Prepare and issue instructions to assessors designed to promote uniformity throughout the State and its local taxing jurisdictions in the assessment of property for the purpose of taxation. It may adapt such instructions to varying local circumstances and to differences in the character and conditions of property subject to taxation as in its judgment is necessary to attain such uniformity."

Government Code Section 15607:

"The board shall summon assessors to meet with it or its duly authorized representatives at least once annually, at places within the State it designates, to study or discuss problems of administration of assessment and taxation laws and to promote uniformity of procedure in tax matters throughout the State."

Government Code Section 15640:

"The State Board of Equalization shall make surveys in each county and city and county to determine the adequacy of the procedures and practices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him by law."

Revenue and Taxation Code §646:

"The records of the Assessor are at all times during office hours open to the inspection of any person charged with the duty of assessing property in the county for any taxing agency."

Revenue and Taxation Code §1609:

"On the hearing of the application, the County Board may subpena witnesses and take evidence in relation to the inquiry."

Revenue and Taxation Code §1610:

"During the session of the County Board, the Assessor and any deputy whose testimony is needed shall be present and may make any statement or produce evidence on matters before the County Board."

Revenue and Taxation Code §407:

"Annually, on the second Monday in July, the Assessor shall transmit a statistical statement to the Board, supplying any statistical information which the Board may require, and shall supply from time to time any other information required by the Board."

Revenue and Taxation Code §408: "Any information and records in the Assessor's Office which are not required by law to be kept or prepared by the Assessor, are not public documents and shall not be open to public inspection."

Statement of the Case.

The action complained of herein is based upon the attempt of nine shopping center owners at a local Board of Equalization hearing to introduce evidence of the ratio of assessed to fair market value prevailing in the taxing jurisdiction on the lien date for the tax year 1961-1962. Eight of the nine owners brought an action in the Superior Court following a denial of their applications by the local Board of Equalization.

The petitioners appeared on July 18, 1961 and July 21, 1961 before the Los Angeles County Board of Supervisors sitting as a board of equalization. The applications for assessment reduction were filed on July 15, 1961 with the clerk of the board, together with affidavits setting forth sales ratio studies made by a former employee in the assessor's office. Petitioners introduced evidence of the market value of their properties through the use of an expert who had specialized in the making of loans for permanent financing of shopping centers as the loan correspondent for major insurance companies. He had appraised approximately 125 shopping centers. It was stipulated that his expertise would permit his testimony of market value to be admitted. He valued the real property of the shopping centers by capitalizing the net operating income of the centers before deduction of depreciation and interest. He testified with particularity as to the amount

of rentals and net operating income derived therefrom and the capitalization rates to be applied thereto, weighing the quality of the various tenancies and percentage rents in order to arrive at a fair market value conclusion as of the lien date in 1961.

On the other hand, the assessor's office introduced no evidence from which the market value could be determined and no opinion evidence of the market value of any of the centers, affirmatively testifying in fact that their values were arrived at: (1) by a panel and not by one man; (2) tht the function of the office was not to find market value but only value to the owner of the property; (3) that the assessed values of the properties were arrived at by comparing assessed values of the petitioners' properties with assessed values of other allegedly identical or like properties; and (4) that full cash value and assessed value were one and the same thing which in turn was equivalent to 50% of the assessor's opinion of market value.

In addition, the petitioners had sought to introduce a sales ratio study attached to their applications obtained from realty boards in Los Angeles County for sales of property following January 1, 1961. These sales had indicated the date, the address of the property and the property sales price. The sales prices were divided into the assessed valuation of said properties on the 1961-1962 roll to arrive at a ratio and would have shown that the prevailing ratio in Los Angeles County did not exceed 25% in respect of sales prices.

The petitioners sought to compel the assessor to disclose to the local Board the State Board of Equalization ratio studies for the tax year in question and for the taxing jurisdiction which were then in the possession

of the assessor. Objection was sustained on the ground that the figures were preliminary and not open to public inspection. Such ratio studies would have disclosed for 1961-1962 a prevailing ratio in Los Angeles County of approximately 24%.

The board further refused to permit into the record at the hearing the published ratios for the year 1960-1961 for Los Angeles County on the ground that said ratios were immaterial in determining the 1961 assessments. Said publication would have shown a ratio prevailing in 1960-1961 of 23.3%.

Following a continuation of the hearing, on July 27, 1961, the petitioners again sought to introduce the tentative tabulations of the State Board of Equalization and 210 verified sales ratio studies made by the assessor and introduced into the record by him in connection with a hearing had before the same Board of Equalization in the intervening week, as well as the 1957 United States Bureau of the Census Report for Los Angeles County, all as a collective exhibit. The assessor's studies would have shown a prevailing ratio of approximately 24% and the Census studies which had been offered but not accepted in connection with other hearings would have shown a ratio of 18.5%. The counsel for the assessor renewed objections made at the time of the original offer of the documents and exhibits and objection to introduction of all of said items was sustained on the basis of the previous objections.

The Board of Equalization was under the impression that their only function was ". . . to arrive at a decision if you have been fairly treated by like properties through out the County, that you are equal in the assessment." Such comment followed the assessor's remark that he

was prepared ". . . to offer evidence as to our assessed value on all of them, why we do it, and compare it with comparable property."

No findings of fact were made by the board when the applications for reduction were denied.

At the trial of the matter, the Superior Court judge felt that he was bound by the then published opinion of *Web Service Co. v. County of Los Angeles,* 242 Cal. App. 2d 1, 51 Cal. Rptr. 753 (1966).

The Court of Appeal agreed with the trial court, but went on to hold that no discrimination could be shown by differences between the State's determination of ratio and the County ratio. Furthermore, it held, in substance, that the presumption of the validity of the assessor's activities of itself was substantial evidence upon which the administrative body could have relied and that the board could have disregarded completely the valuation testimony of the expert of the petitioners', since a capitalization test was used. The rationale of the appellate court was that the question of the use of a ratio in the preceding year and the question of tentative tabulations for the tax year in question had already been decided by the *Web Service Co.* case, *supra,* and by the case of *Leach Corp. v. County of Los Angeles,* 228 Cal. App. 2d 634, 39 Cal. Rptr. 654 (1964). It also held that the transcript did not bear out the petitioners' position with respect to the board's reliance upon an erroneous concept of law and that lack of findings was not error in that they had never been required of local county boards nor had petitioners requested findings.

REASONS FOR GRANTING WRIT.

Under California Law, and Under the Ruling of the Appellate Court, Petitioners Have No Remedy to Review the Actions of the Local Administrative Board.

This case involved the second year of hearings following the adoption of Section 1815 *et seq.* of the Revenue and Taxation Code. The assessor's ratio testimony was to the effect that he assesses at full cash value which is only one-half of fair market value, *i.e.*, his opinion of 50% of the fair market value and that full cash value and fair market value were not the same. He stated that he would pay little attention to the tentative tabulations of the state board for the year in question; that in his opinion that had no effect, no direction, statutory or constitutionally, on the conduct of the assessor. The Board refused to compel him to deliver up the tabulations which were in his possession to it in order that it might determine the ratio prevailing in the County on the lien date. *Web Service Co. v. County of Los Angeles, supra,* had been an unpublished opinion until the hearings in the Los Angeles County Superior Court. The transcripts in the present case hereing had been incorporated by reference in that particular case, which involved business personal property, and as can be seen from the opinion of the appellate court in the *Web* case, the verified sales ratio studies of the assessor excluded herein were admitted into the record of the local board of equalization at an intervening hearing before it. The question of whether or not there truly existed any privilege had been exhaustively covered in the appellants' briefs in the trial and appeal of the case herein, and also in connection with the tax

year 1960-1961. For this reason, appellants will concentrate on the basic misconception of the Court of Appeal herein to the effect that "differences between the State's determination of ratio and the County's ratio is not evidence of discrimination."

Two salient factors have been overlooked by the appellate court in arriving at its conclusion to the effect that the State's determination of ratio is not evidence of discrimination.

First, it has ignored the basic statutory scheme existing in California under which the provisions of the Revenue and Taxation Code relating to ratio determinations have been adopted. Simply stated, by virtue of the constitutional duty of intercounty equalization imposed upon the State Board, the failure of the assessor to object to the ratio determinations of that board, the power which the State Board has to cause a wholesale raising or lowering of the assessment roll in the county based upon such ratio determinations, and the universal reliance of the appellate courts upon such ratios as a justification for fractional assessment, the statewide and local ratio determinations of that state agency may be used to evidence the prevailing ratio on the lien date within the county. In fact, the assessor must place his ratio as near to that of the State Board as possible. (*Hanks v. State Board of Equalization,* 229 Cal. App. 2d 427, 40 Cal. Rptr. 478 (1964); *Michaels v. Watson,* 229 Cal. App. 2d 404, 40 Cal. Rptr. 464 (1964); 40 Opins. Calif. Atty. Gen. 261.) When applied to the market value of the property of the petitioners, the State Board ratios could cause a product to be arrived at which would be substantially less than the amount of the assessment placed upon such property by the as-

sessor. In fact, this is the only acceptable evidence of discrimination under California law. (*Best v. County of Los Angeles*, 228 Cal. App. 2d 655, 659, 39 Cal. Rptr. 665 (1964); *A. F. Gilmore Co. v. County of Los Angeles,* 187 Cal.App.2d 471, 9 Cal. Rptr. 67 (1960).

Second, in sections 1815-1818 of the Revenue and Taxation Code, it is clearly set forth that the State Board must relate the market value determination in the tax year in question to that of the prior year. While the State Board trends forward the market value determinations through application of various statistical factors, such as increased school enrollment and sales tax payments, it must nevertheless make a triennial survey of market value. The point is, however, that the market value to be used in its ratio determinations for any given year must be up-to-date through application of the various factors set forth in the statute and the state board must show the derivation of such total market value for the tax year in question from the total market value on the roll in the taxing jurisdiction in the prior year. In short, there must always be a relationship within any given three year period to the current year's market value. Thus, the fundamental premise of immateriality upon which the court's decision is based and upon which the *Web Service Co.* case relies, does not exist. Furthermore, in the *Web Service Co.* case, there was absolutely no statement of reasons why the ratio determinations of the prior year under the statutory scheme of California would be immaterial in a subsequent year. Suffice it to say that the petitioners were never given a chance to tie in the matter. At very least, the local board would be in a position to use such information as the basis of cross-examination of the as-

sessor in order to determine what ratio in fact was being used within the taxing jurisdiction.

With respect to the law in the State of California, however, the appellate court was in error because Division 1 of that very same district, in the case of *Hanks v. State Board of Equalization,* had determined that State Board of Equalization ratio determinations are controlling upon the local jurisdictions. Thus, the court stated, commencing at page 430, as follows:

> "A review of the history and development of the law dealing with local property taxation reflects the early-established pattern of assessment of property for purposes of taxation and equalization of assessments in this state; it exists the same today —each county assessor makes the initial assessment, each county board equalizes assessments within the county, and the state board equalizes the assessment rolls among the counties. Appellant's basic argument is that since all assessment for property tax purposes must be made at 100 per cent of market value, a uniform fraction or ratio of market value cannot be used in the process of equalization of assessments. . . . Thus, the only expressed constitutional duty of the state board is to equalize the valuation of taxable property in the counties of the state (art. XIII, §9). This duty is not set up in terms of equalizing at 100 per cent of market value, nor is the state board's power to increase or lower the assessment roll so as to equalize the assessment and make it 'conform' to the true value in money of the property contained in the roll. If the state board is required under article XIII, section 9, to lower or raise a roll to 100 per cent of

> market value, as urged by appellant, why then is the state board, in addition, separately but in the same constitutional provisions, given the duty and power to equalize; for if 100 percent of market value (true value in money) must be used, then equality and uniformity are automatically produced by raising or lowering rolls to 100 per cent of market value. Of what purpose then is the duty or power of the board to equalize? It is exactly what the name implies—'to equalize the assessment of taxes in the several counties, so as to cause them to approximate as nearly as possible to the equality and uniformity enjoined by the Constitution.'. . ."

In fact, as set forth in the appellants' briefs certified herein, it was urged by County counsel upon the District Court of Appeal in the companion case of *Michels v. Watson,* 229 Cal. App. 2d 404, 40 Cal. 464 (1964) that the ratio determinations of the state board were in fact controlling. This was also urged by the County counsel upon the same District Court of Appeal in the case of *Best v. County of Los Angeles,* 228 Cal. App. 2d 655, 39 Cal. Rptr. 665 (1964). An examination of the briefs filed in those cases will verify the statements set forth herein.

So far as sales ratio studies are concerned, the California Assessors Handbook, Section AH 311, published by the Assessment Standards Division of the California Board of Equalization approved the use of such studies in order to determine (1) where additional appraisal work is needed and (2) in order to measure a county's overage assessment level. However, in *Web Service Co.*

v. County of Los Angeles, supra, heard in the intervening week, the assessor's sales ratio studies had been admitted by the Board of Equalization and would have shown a ratio of 24% for the tax year 1961-1962. (*Web Service Co. v. County of Los Angeles, supra,* p. 4.) To keep such evidence out because it was not separately offered is simply contrary to the California cases relating to equalization hearings which cases have consistently held that technical evidentiary rules do not apply to such hearings. (*A. F. Gilmore v. County of Los Angeles,* 186 Cal.App.2d 471, 476, 9 Cal. Rptr. 67 (1960).) None of the cases cited by the court as authority for the requirement of separate offer involved hearings before quasi-judicial boards.

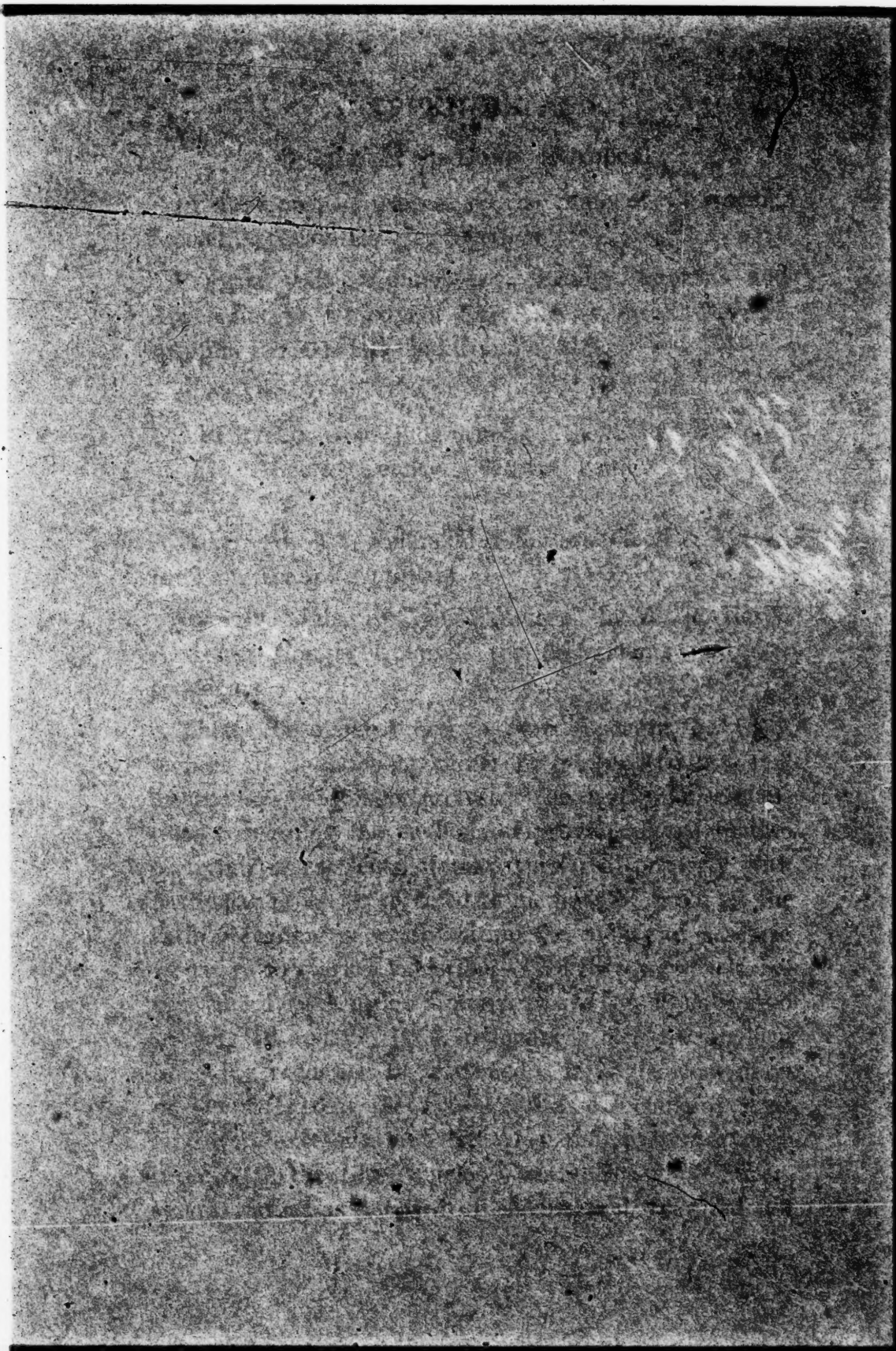
In addition, the Assessors Handbook, AH 510M, and the case of *Mahoney v. City of San Diego,* 198 Cal. 388, 245 Pac. 189 (1926), require the market value opinion of the assessor to be that of the total property. This is the reason that a panel opinion is not satisfactory. The total value under California procedure is divided into the land and improvement values by considering the predetermined land value as basic. Then by subtracting the land value from the total property value, the residual building value is determined. There can be no direct formation of an opinion of total value by a panel, nor a single responsibility for the value. (See AH 510M, pp. 4-7.) Thus the assessor's methods of arriving at a market value determination were improper and the presumption of validity of his acts was no longer effective. (*Mahoney v. City of San Diego, supra,* pp. 397, 402-403.)

Conclusion.

If one examines the underlying bases of *Leach Corp. v. County of Los Angeles, supra,* and *Web Service Co. v. County of Los Angeles, supra,* and the opinion of the trial court therein, it must be concluded that the petitioners were deprived of a hearing. While the record herein may not be as good as that in connection with the 1962-1963 hearings, there is no question but that in an administrative quasi-judicial hearing, the taxpayer is not required to meet the formal requisites of a trial by jury or by court in the courtroom. It is further clear that the appellate court herein was clearly mistaken in the impact of the State Board of Equalization ratios upon the local county. The effect of these ratio studies is set forth at much greater length in connection with the Petition for Certiorari for the tax year 1962-1963. Under the circumstances, it is respectfully submitted that a hearing should be granted and the matter remanded to the Los Angeles County Board of Supervisors to grant a hearing in accordance with law.

Respectfully submitted,

BAKER, ANCEL AND REDMOND and
SMITHERS, GOOD AND POTTER,
By L. R. BAKER,
Attorneys for Petitioners.



APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.

Pomona Valley Center, Inc., et al., Plaintiffs and Appellants, vs. County of Los Angeles, et al., Defendants and Respondents. 2nd Civ. No. 31828.

Filed Dec. 9, 1968.

APPEALS from judgments of the Superior Court of Los Angeles County. Martin Katz, Judge. Affirmed.

Baker, Ancel & Redmond, Smithers, Good & Potter, for Plaintiff and Appellant.

John D. Maharg, County Counsel, by A. R. Early, Assistant County Counsel, for Defendants and Respondents.

These consolidated actions were brought by eight owners of a shopping center to recover county real estate taxes paid under protest. The cases involve questions concerning the methods of proving discrimination or unfair assessments of taxpayers' real property with particular problems directed to methods of proof of the ratio prevailing generally within the county of assessed valuation to market valuation. Hearings were held before the Los Angeles County Board of Equalization on July 18 and 27, 1961, following which the applications for reduction were denied. It is the contention of plaintiffs that the 1961-1962 assessments of their land were excessive and that when they presented their protests to the Los Angeles County Board of Supervisors, sitting as a board of equalization, they did not

receive a fair hearing and were denied due process because of certain evidentiary rulings and restriction of cross-examination by the board; the failure to make findings of fact and conclusions of law relating to market value and the ratio of assessed to market value prevailing generally in the county; they allege further that the bias of the board followed an erroneous concept of law relating to the method of proving lack of equalization; there was no substantial evidence to support the decision of the board.

Similar contentions regarding Los Angeles County assessment ratios and practices were considered and rejected by divisions of this court in the cases of *Leach Corp. v. County of Los Angeles,* 228 Cal.App.2d 634, and *Web Service Co. v. County of Los Angeles,* 242 Cal.App.2d 1.

We must determine if the board rulings improperly or prejudiciously prevented the taxpayers from proving their cases. If so, the conduct of the board would be a violation of due process. (*Leach Corp. v. County of Los Angeles, supra,* at p. 642.)

There is a presumption that the original assessment is correct. The taxpayers had the burden of showing the board that the assessor's figures were improper. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478; *Leach Corp. v. County of Los Angeles, supra.*) These cases were tried before the board on the theory that assessments on the taxpayers' property to its value exceeded that generally prevailing in the county. For the taxpayers to substantiate this theory it would be necessary for them to submit evidence that there was a disparity of the ratio between that applied to appellants' property and that applied to other property generally

prevailing in the county. To prove these contentions, the taxpayers must, of course, show the property value of the ratio prevailing generally and the ratio in his case. To sustain his burden the taxpayer must at least make a prima facie showing in this regard. That is, he must show some evidence of the inequality before there is any burden on the assessor. Without this prima facie showing the assessor is not obliged to go forward with any evidence. He may stand on his presumption. (*Leach Corp. v. County of Los Angeles, supra*, at p. 637.)

The matter came to trial before the superior court on July 20, 1966, sitting without a jury and evidence was received, including the transcript of the proceedings before the board of equalization and evidence offered before the board. The trial court made findings to the effect that the hearing before the board had been fair and that there was substantial evidence in the hearings before the board to support the board's determination that the assessments were proper, and not discriminatory. The trial court further concluded that certain evidentiary rulings pertaining to the admission and exclusion of evidence by the board were correct and fair and plaintiff suffered no prejudice therefrom.

The scope of our review in this type of case is explained in *Bank of America v. Mundo*, 37 Cal.2d 1, at page 5: "The duty of determining the value of the property and the fairness of the assessment is confided to the appropriate county board of equalization. Furthermore, in discharging this duty, the board's determination upon the merits of the controversy is conclusive; the taxpayer has no right to a trial de novo in the superior court to resolve conflicting issues of fact as to the taxable value

of his property. (*Universal Consol. Oil Co. v. Byram,* 25 Cal.2d 353, [153 P.2d 746]; *Eastern-Columbia, Inc. v. County of Los Angeles,* 70 Cal.App.2d 497, 500 [161 P.2d 407].) The question presented to the superior court in such an action is whether there was evidence of sufficient substantiality before the board to justify the finding (*Kaiser Co. v. Reid,* 30 Cal.2d 610, 626 [184 P.2d 879]), and in the absence of fraud or malicious or arbitrary use of its powers the board is the *sole judge of questions of fact and of the values of property.* (*Los Angeles Gas & Elec. Co. v. County of Los Angeles,* 162 Cal. 164, 170 [121 P. 384].)" (Emphasis added.)

In *A. F. Gilmore Co. v. County of Los Angeles* (1960) 186 Cal.App.2d 471, at pp. 476-477, the court states that: "The issue before a reviewing court is whether there was substantial evidence before the board upon which its determination could have been founded. The inquiries which the board makes are: (1) What is the fair market value of the property in question; and (2) whether the assessed value thereof is equal to the product of fair market value and the ratio of assessment values to fair market value prevailing generally throughout the county. See *Wild Goose Country Club v. County of Butte, supra,* 60 Cal.App. 339, 343."

In the case at bench, the court found: "The county assessor was present at the hearing before the Los Angeles County Board of Equalization, participated therein and was cross-examined by plaintiffs. The Board made no written findings herein.[1] On objection, the board excluded from evidence the following matters: (1) The tentative unpublished tabulations of the State Board of Equalization regarding its determination of the ratio of

[1]None were requested by appellants.

assessed value to full cash value in Los Angeles County for the 1961-1962 tax year. [A similar board ruling was upheld in *Leach* and *Web Service, supra,* at p. 646, p. 12.] (2) Opinion testimony of the witness Watson regarding the ratio of assessed to market value prevailing generally for real property in the County of Los Angeles on the first Monday in March, 1961, and a written study prepared by this witness on the basis of 381 sales upon which he based his said opinion. [A similar board ruling was upheld in *Web Service, supra,* at p. 11.] (3) The published determination of the State Board of Equalization of the ratio of assessed value to full cash value in Los Angeles County as of the tax lien date of the prior year, to wit, 1960. [A similar board ruling was upheld in *Leach, supra,* at p. 11.] (4) A purported sales-ratio study prepared and offered by the assessor in another proceeding before the Los Angeles County Board of Equalization known as the 'Mar Vista case' consisting of two lists of a total of 210 real property sales. Said purported sales-ratio study was offered by plaintiffs in a single combined motion to introduce it together with (a) an otherwise unidentified census study, [A similar board ruling was upheld in *Leach* and *Web Service, supra,* at p. 642, p. 11.] and (b) the unpublished, tentative tabulations of the State Board of Equalization regarding its determination of the ratio of assessed value to full cash value in Los Angeles County for the 1961-1962 tax year."

The trial judge in reviewing the board's action in excluding the Mar Vista evidence stated that he was bound by the *Leach* and *Web Service* precedents; the exclusion of the Mar Vista studies was not erroneous because appellants made no offer of proof and an am-

biguous offer was coupled with the offer of material previously held objectionable in *Web Service.*

Where several different matters are offered in evidence, some of which are vulnerable to objection, the entire offer should be rejected. (*Swafford v. Board of Education* (1900) 127 Cal. 484 at 487; *Lewis v. Western Truck Line* (1941) 44 Cal.App.2d 455 at 465-466 (hearing denied by Supreme Court); *Shumate v. Johnson Publishing Co.* (1956) 139 Cal.App.2d 121 at 134; *Eaton v. Brock* (1954) 124 Cal.App.2d 10 at 16.) The offer of proof of the "census study" was entirely too vague. It did not show what particular "study" related to the issues before the board. Unless offers of proof are precise, it is proper to reject them. (*Byrd v. Savage* (1963) 219 Cal.App.2d 396 at 402; *Marshall v. Hancock* (1889) 80 Cal. 82 at 84; 48 Cal.Jur.2d Trial, § 108, page 152.) Likewise, the tentative ratio tabulations prepared by the State Board of Equalization have been held to be vulnerable to objection in both the *Leach Corp.* and *Web Service* cases, *supra.*

"(5) A copy of a letter of May 25, 1961, addressed to Assessor Quinn, without copies of the enclosures thereto. [Appellant appears to have abandoned this ruling as a ground for appeal.] All of said rulings pertaining to the admission and exclusion of evidence were correct and fair, and plaintiffs suffered no prejudice therefrom. . . . The board did not follow an erroneous concept of law to the effect that lack of equalization could be shown only by comparing plaintiffs' properties with other specific similar properties, or without consideration of the ratio of assessed to market value generally prevailing throughout the county. Members of the board were innocent of actual and express fraud

in the conduct of said hearing and in reaching their decisions. [Appellant appears to have abandoned this as an issue on appeal.] There is *substantial competent evidence in the record* of the hearing before the Los Angeles County Board of Equalization to sustain the board's decisions that plaintiffs were not entitled to reduction of the assessments herein." (Emphasis added.)

We agree with the trial court that appellants did not sustain their burden of showing the assessments were unfair as to their property as distinguished from property generally in the county.

Appellants' main valuation evidence for the shopping centers was presented through the testimony of witness Glass. Mr. Glass used a capitalization test which might have been considered by the board to be incomplete or of limited or no weight.

Appellants objected that the assessor's opinion of market value was based on a "team effort" and not an individual effort of the assessor. The assessor did testify that he used various means of obtaining market value including the summary, income and reproduction cost approach. While appellant's witnesses used the income approach the board was not obliged to accept this testimony and the board could properly resolve any conflicts concerning evidence of market value. Opinions of value and other expert opinions, *even though uncontradicted,* are worth no more than the reasons and factual data upon which they are based. In *San Diego Gas & Elec. Co. v. Sinclair* (1963) 214 Cal.App.2d 778, at 783, the opinion states that: "An expert's opinion is no better than the reasons given for it. ' "If his opinion is not based upon facts otherwise proved . . . it cannot rise to the dignity of substantial evidence." ' " (Citing

Sears, Roebuck & Co. v. Walls, 178 Cal.App.2d 284, 289.)

To the same effect is *Hemmerling v. Tomlev, Inc.* (1967) 67 Cal.2d 572 at 577 where Chief Justice Traynor states that "We cannot agree, however, with the Hemmerlings' contention that the trial ourt was bound to accept their uncontradicted valuation testimony." A tax case in which the same result was reached is *Bordenave v. Franchise Tax Board,* (1958) 158 Cal.App.2d 291.[2]

For the most part, plaintiffs' efforts at the hearing were directed toward an attempt to show that the assessor had used improper methods or used an assessment ratio which was contrary to the State Board of Equalization's ratio for the tax year in question or preceding tax years. As stated above, similar contentions were also rejected in *Leach* and *Web Service.*

The only evidence received as to the county-wide assessment ratio was that introduced through the cross-examination of the assessor and his deputies that the rate was 50% of the assessor's opinion of market value.

The assessor testified that his office uniformly assesses at a 50% of assessed valuation to his opinion of market value. The taxpayers must show the ratio prevailing generally and the ratio in their case and to at least make a prima facie showing of unfair assessment or show some evidence of the inequality before there was any burden on the assessor. Without this prima

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[2]See also *People v. Bassett,* 69 A.C. 121, at p. 145, where the court rejected expert testimony which could not be deemed substantial evidence. See also *Estate of Powers,* 81 Cal.App.2d 480, and *Estate of Teed,* 112 Cal.App.2d 638, where the sole testimony of experts was rejected as not being substantial evidence.

facie showing the assessor is not obliged to go forward with any evidence. He may stand on his presumption. No discrimination is shown by such testimony. Differences between the state's determination of ratio and the county's ratio is not evidence of discrimination. Appellants must show a discriminatory application of the county rate to their property. Lacking substantial evidence submitted by the taxpayers, it was proper for the board to rely on the presumption as to the fairness of the assessment. Of course, appellate courts do not weigh conflicting substantial evidence on "insufficiency of evidence" appeals; nor should the superior court when it is reviewing administrative board decisions. (*Strei v. State Personnel Board,* 210 Cal.App.2d 643, 648.)

In 1966 the rule was that "if the presumption affects the burden of proof, the court is still required to affirm a verdict or finding in favor of the party relying on the presumption unless it is possible for the court to find that the adverse party overcame the presumption as a matter of law." (California Evidence Code Manual, C.E.B. (1966), § 2.35, p. 434.)

"Whether a party has discharged the burden of proof is a question for the trier of fact to decide. If the party with the burden of proof fails to establish in the mind of the trier of fact the requisite degree of belief concerning the fact in issue, the trier of fact is required to rule against him regarding that fact." (California Evidence Code Manual, C.E.B. (1966), § 2.37, p. 435.)

Under the presumption of the fairness and regularity of the assessment and in accordance with the rule prevailing at the time of the trial that "a finding of fact

may rest upon a disputable presumption although all the other evidence is contradictory," (*Strei v. State Personnel Board, supra,* at p. 650) we must affirm the judgment of the trial court. This was substantial evidence in this regard to support the board's implied finding that the assessments were fair. The taxpayers did not sustain their burden of showing the board that the assessor's figures were unfair or discriminating. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478; *Wild Goose C. Club v. County of Butte,* 60 Cal.App. 339, 342. See *Utah Construction Co. v. Richardson,* 187 Cal. 649, 654.)

As to appellants' argument that the board was biased or prejudiced, there is nothing of substance in this record to indicate that the board acted under an erroneous concept of law or that the remarks of the supervisors at the hearing were such as to indicate that they did not fairly hear and consider plaintiffs' application. The transcript does not bear out appellants' interpretation of prejudice. The trial court concluded that the hearing was fair. This court agrees.

The lack of findings by the board was not error and written findings of fact had never been required of the local county boards of equalization at the time the proceedings took place, nor did appellants request that such findings be prepared.

Prior to 1967, the appellate courts of this state had always reviewed the decisions of local county boards of equalization on the basis of the implied findings necessary to support each decision. What they have actually examined has been the record (transcript and exhibits) of the proceedings before the board. (*Web Service Co.*

v. County of Los Angeles (1966) 242 Cal.App.2d 1, 7; *Leach Corp. v. County of Los Angeles* (1964) 228 Cal.App.2d 634, 637; *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 564.) In those judicial proceedings where findings are required, the courts have held that there is no reason why inadequate findings may not be supplemented by reference to the record; and that, so supplemented, the findings are adequate if they permit the court to determine whether the decision is based on lawful principles. (*Doyle v. Board of Barber Examiners* (1966) 244 Cal.App.2d 521, 525.)

In 1967 the Legislature provided for the first time that "Written findings of fact and conclusions of law of the county board *need not be made unless requested in writing by a party prior to the hearing.*" (Emphasis added.) (Rev. & Tax. Code, § 1605.5.) Even under this new law, appellants are not entitled to complain of the lack of findings because they failed to request them.

It should be noted that the decisions of the board here included express findings regarding the ultimate facts at issue, to wit, the correct equalized assessments of these properties. Findings other than those on ultimate issues are, of course, not required. (*California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 273; *Martin v. Alcoholic Bev. Etc. Appeals Bd.* (1959) 52 Cal.2d 259, 264-265.)

Even in eminent domain proceedings findings are required only on the ultimate issue of valuation, not with respect to the facts underlying that determination. (*City of Signal Hill v. Wyse* (1935) 9 Cal.App.2d 641.)

Appellants complain that the board committed error in two more respects; first, that it refused to compel the deputy assessors to produce the workpapers they had used to determine the values of the shopping centers; and, second, that it had refused to compel disclosure by the deputy assessors of net incomes, capitalization rates, depreciation and comparable sales data. The superior court herein found that it was true that the board had denied a request of counsel for appellants to direct the assessor to produce the workpapers used to determine market values. (Ex. 1, July 27, p. 12.) Deputy Assessor Morrisey had testified that "the actual workpapers were discarded as soon after we made our complete appraisal they were no longer of any use" (Ex. 1, July 27, p. 8, lines 5-7); likewise, Deputy Assessor Schneiderman had also testified that he had no worksheets in his possession and had no knowledge of any in the office of the assessor (Ex. 1, July 19, p. 137). There is no legal requirement that such papers be preserved. Appellants did not request the assessor before the hearing to produce his worksheets nor did they request a subpoena from the board to require their production at the hearing (cf. Rev. & Tax Code, §1609). Nor did appellants give either the board or the superior court any hint of what they contend such worksheets might have disclosed. The superior court concluded as a matter of law that the board committed no error prejudicial to appellants in this respect.

Contrary to appellants' contentions, the superior court found that "the board did *not* refuse to compel disclosure by deputy assessors of net income, capitalization rate, amount of depreciation and comparable sales data used by said witnesses in computing market values."

Appellants never asked the board to order any deputy assessors to disclose anything nor did the board ever refuse such a request.

The judgments are affirmed.

Nutter, *J. Pro Tem**

We concur:

Roth, *P. J.*

Herndon, *J.*

THE COURT: This opinion is not for publication pursuant to the provisions of Rule 976, California Rules of Court.

*Appointed by the Chairman of the Judicial Council.

MAY 24

October Term, 1968

No. 1331

PENDOLA VALLEY CENTER, INC., a California corporation, et al.,

Petitioners,

vs.

BOARD OF LOS ANGELES, et al.,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division

BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

October Term, 1968
No. 1321

POMONA VALLEY CENTER, INC., a California corporation, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division Two.

BRIEF IN OPPOSITION.

Opinion Below.

Pursuant to its determination under Rule 976 of the California Rules of Court, the opinion of the California Court of Appeal, Second Appellate District, Division Two (hearing denied by the California Supreme Court) was not published.[1] However, it is printed in Appendix A of the Petition.

[1]Rule 976(b) provides that an opinion of a court of appeal shall be published only "if it involves a new and important issue of law, a change in an established principle of law or a matter of general public interest."

Jurisdiction.

The Petition invokes jurisdiction under 28 U.S.C. §1257(3) alleging that the petitioners did not enjoy due process of law at the property tax equalization hearing below conducted by the Los Angeles County Board of Equalization.

Questions Presented.

Petitioners contend that they were denied due process "by the appellate court in making the presumption of validity of the act of a public official conclusive."

Petitioners also allege that they were denied due process at the hearing before the Los Angeles County Board of Equalization because

a. the board did not make formal findings of fact,

b. the board excluded an alleged sales ratio study prepared by the assessor, when offered in evidence by the petitioners in a single combined motion to introduce it together with other inadmissible items of evidence; no offer of proof was made,

c. the board excluded a sales ratio study prepared for petitioners by a former county employee,

d. the board excluded evidence of the countywide assessment ratio for years *prior* to the year involved herein,

e. the board excluded evidence of tentative, unpublished assessment ratio studies made by the State Board of Equalization for the current year on the ground that they were privileged by statute until finalized and published,

f. the board applied an erroneous concept of law, and

g. the board applied the rules of evidence.

ARGUMENT.

1. The Challenged Presumption Is Not "Conclusive".

The only presumption regarding the validity of the act of a public official involved in this case is the presumption that public duty was properly performed and that the assessment therefore is correct. The California courts held that this presumption applied in this case because the taxpayers had not sustained their burden of showing the board that the assessor's figures were unfair or discriminating (Pet. App. A, pp. 7-10). This obviously is not a "conclusive" presumption at all. It regulates the burden of proof. In 1961 it also constituted substantial evidence which could be weighed against other evidence, a rule which was abolished when California adopted Division 5 Chapter 3 §§600-668 of its Evidence Code in 1967 (Calif. Stats. 1965 ch. 299).

2. Findings of Fact Are Not Required When an Appellate Court Can Adequately Review a Case by Examining Its Record.

This point is fully explained in the opinion of the court below (Pet. App. A, pp. 10-11).

3. The Board Properly Excluded the Alleged Sales Ratio Study Prepared by the Assessor.

Counsel for the taxpayers offered an alleged sales ratio study (it was actually merely a list of sales) together with two other items of clearly inadmissible evidence. Counsel for the county suggested that these be taken one at a time [Ex. 1 July 27 p. 57][2], but the

[2]Superior Court Ex. 1 is the transcript of the hearing before the board of equalization.

taxpayers ignored this suggestion. All three items were excluded. No offer of proof was made. The matter is fully argued in the opinion below (Pet. App. A, pp. 5-6).

4. The Board Properly Excluded the Sales Ratio Study of the Taxpayers' Witness.

The taxpayers asked the witness Watson to state the assessment ratio "for *real* property within the County of Los Angeles on the first Monday in March 1961" [Ex. 1 July 19 p. 87]. The witness did not investigate the fair market value of any of the 381 properties in his sample; he had not verified the sales data nor had he investigated the terms of the sales. The data was untrustworthy because not verified, because obtained from people who were unnamed, and because the names of the buyers and sellers were unknown (thus making it impossible to check). One-third of the sales in his sample occurred *after* the tax lien date. The witness was not qualified as a real estate appraiser or as a statistician. His former employment in the assessor's office had been in the personal property section, *not* the real estate section. His 381-item sample represented only 22/1000ths of 1% of the 1,732,101 parcels on the assessment roll—a sample which is inadequate in size. Furthermore, the properties in the sample were selected from an area not large enough to be representative of the county as a whole.[3]

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[3]Regarding the requirement that the sample be fairly representative of the taxing district, see *Kittery Elec. Light Co. v. Assessor,* (1966 Maine) 219 A. 2d 728 at 734.

5. The Board Properly Excluded Assessment Ratio Evidence Pertaining to Prior Years.

The taxpayers complain that the board excluded evidence of the assessment ratio for prior years. At page 18 the Petition even argues that in other cases this office has contended that assessment ratio determinations of the State Board of Equalization were not only admissible but even controlling. This is a gross distortion, because in the cases cited the ratios being considered were not those pertaining to prior years, nor were they the tentative, unpublished determinations for the current year which the California courts have held to be privileged by statute until finalized and published.

The reasons why the California courts have consistently held that the assessment ratios for prior years are not relevant evidence of this year's ratio are readily explained. California permits property to be assessed at a fraction of its value and the fraction differs not only from county to county but from year to year within the same county.

> "Assessment for tax purposes is a continuous process which normally reflects many changes each year. It is not a static thing."

Leach Corp v. County of Los Angeles, (1964) 228 Cal. App. 2d 634 at 642, 39 Cal. Rptr. 654 (hearing denied by Calif. Sup. Ct).

The following cases illustrate the use of different assessment ratios:

40%—*Eastern-Columbia, Inc. v. County of Los Angeles,* (1945) 70 Cal. App. 2d 497, 161 P. 2d 407;

35%—*De Luz Homes, Inc. v. County of San Diego,* (1955) 45 Cal. 2d 546 at 558-559, 290 P. 2d 544;

25%—*Fairfield Gardens v. County of Solano,* (1955) 45 Cal. 2d 575, 577, 290 P. 2d 562;

25%—*Victor Valley v. County of San Bernardino,* (1955) 45 Cal. 2d 580 at 583, 290 P. 2d 505;

70%—*El Toro Development Co. v. County of Orange,* (1955) 45 Cal. 2d 586 at 588, 290 P. 2d 569;

35%—*Michael Todd Co. v. County of Los Angeles,* (1962) 57 Cal. 2d 684 at 697, fn., 371 P. 2d 340;

60%—*Wild Goose Country Club v. County of Butte,* (1922) 60 Cal. App. 339 at 343, 212 Pac. 711;

45%—*Lockheed Aircraft Corp. v. County of Los Angeles,* (1962) 207 Cal. App. 2d 119 at 123 fn., 24 Cal. Rptr. 316;

50%—*Bandini Estate Co. v. Payne,* (1935) 10 Cal. App. 2d 623 at 627, 52 P. 2d 959;

50%—*Kaiser Co. v. Reid;* (1947) 30 Cal. 2d 610, 615, 184 P. 2d 879.

Birch v. County of Orange, (1927) 88 Cal. App. 82 at 87, 262 Pac. 788, is particularly interesting because the court recites the use in that county of a 40% ratio in 1918 and a ⅓rd ratio in 1916.

This is also the general rule in other jurisdictions. See *In re Ewa Plantation Co.* (Hawaii 1963) 384 P. 2d 287 at 290 and *Peck's Products Co. v. Bannister,* (Sup. Ct. Mo. 1962) 362 S.W. 2d 596 at 601.

6. The Board Properly Refused to Compel the Assessor to Disclose the Tentative Unpublished Assessment Ratio Studies of the State Board of Equalization.

The California courts have interpreted the California statutes as creating a privilege which can be waived only by the State Board of Equalization (not the local county assessor) for these studies until they have been finalized and published.[4] We submit that this is a proper interpretation of the California statutes (since amended) which scarcely creates a federal question.

7. The Board Did Not Follow an Erroneous Concept of Law as to the Methods of Showing Assessment Discrimination.

So found the superior court and the court of appeal (Pet. App. A, p. 10). We do not find the point argued in the Petition.

8. The Rules of Evidence Do, in Fact, Apply to the Hearings of County Boards of Equalization in California.

At page 19 the Petition states that California cases relating to equalization hearings "have consistently held that technical evidentiary rules do not apply". This is sheer nonsense! County boards of equalization are created by the California Constitution, Article XIII §9. They perform a judicial function.[5] They may act only

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[4] *Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634 at 643-646, 39 Cal. Rptr. 654 (hearing denied by Calif. Sup. Ct.); *Web Service Co. v. County of Los Angeles,* (1966) 242 Cal. App. 2d 1 at 8-11, 51 Cal. Rptr. 753.

[5] *McClelland v. Board of Supervisors,* (1947) 30 Cal. 2d 124 at 129, 180 P. 2d 678, cert. den. 332 U.S. 823.

on the basis of legal evidence.[6] The Petition cites *A. F. Gilmore v. County of Los Angeles,* (1960) 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 which upheld the decision of a county board of equalization because it was supported by substantial evidence. A dictum in that case says that the board is "not bound by the technical rules of evidence" citing *Rancho Santa Margarita v. San Diego County,* (1933) 135 Cal. App. 134, 26 P. 2d 716. The *Santa Margarita* case was, however, decided on the basis of a statute which has since been repealed, to wit, Calif. Political Code §3676 which had provided that "the board may . . . hear and take such evidence . . . as in its discretion it may deem proper." This discretionary power was revoked when §3676 was repealed in 1939 and its place was taken by Calif. Revenue and Taxation Code §1609 which in its entirety provided that "On the hearing of the application the county board may subpena witnesses and take evidence in relation to the inquiry" (Calif. Stats. 1939 ch. 154).

Conclusion.

This case was decided correctly by the court below. No important question of federal law is involved. We respectfully submit that the Petition herein should be denied.

A. R. EARLY,
Assistant County Counsel,
Attorney for Respondents.

Of Counsel:
JOHN D. MAHARG,
County Counsel.

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[6] *Universal Consolidated Oil Co. v. Byram,* (1944) 25 Cal. 353 at 360, 153 P. 2d 746; *Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634 at 637 and 641-646, 39 Cal. Rptr. 654 (hearing denied by Calif. Sup. Ct.).